



August 15, 2008

Via Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW, TW – A325  
Washington, DC 20554

**Re: WT Docket Nos. 07-195 and 04-356 – Notification of Oral Ex Parte  
Presentation**

Dear Ms. Dortch:

On August 14, 2008, John Muleta, Milo Medin and Michael R. Gardner, Esq. on behalf of M2Z Networks, Inc. met with Commissioner Deborah Taylor Tate. During the meeting, M2Z discussed service rules and interference-related issues consistent with M2Z's previous filings in the above captioned proceedings. M2Z provided Commissioner Tate with a copy of the Ofcom report entitled "UK Code of Practice for the Self-regulation of New Forms of Content on Mobiles." In addition, M2Z provided Commissioner Tate with further evidence of adjacent TDD/FDD operations in the Czech Republic in the form of the attached communications with the Czech Telecommunications Office.

Pursuant to Section 1.1206(b) of the Commission rules, an electronic copy of this letter is being filed. Please let me know if you have any questions regarding this submission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Uzoma Onyeije', with a stylized flourish at the end.

Uzoma Onyeije

cc: Commissioner Deborah Taylor Tate

Enclosures (2)

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# UK code of practice for the self-regulation of new forms of content on mobiles

Review

Review Document

Publication date: 11 August 2008

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## Section 1

# Executive summary

Mobile phone use is widespread among children<sup>1</sup> and seven per cent of 8-17 year olds access the internet via a mobile<sup>2</sup>. The UK code of practice for the self-regulation of new forms of content on mobiles ("the Code") provides a series of undertakings regarding young people's access to, and the classification of, mobile commercial content. The Code was formally published in January 2004 and the resulting Classification Framework ("the Framework") was published in February 2005. All major UK mobile phone operators subscribe to and support the Code and the Framework which act as self-regulatory instruments.

Audio-visual content available on mobiles arises from two sources. Some content is provided directly by the operator or a contracted third party (and referred to in the Code as 'commercial content'). This content is under the mobile operator's control, enforced by contractual arrangements with the content creator/supplier. The other source of content available on mobile phones is from the internet. Internet-based content is outside the control of the mobile operator (and is referred to in the Code as 'internet content').

This Review of the Code was achieved with the support of the Home Office and the Children's Charities' Coalition for Internet Safety (CHIS),<sup>3</sup> and as a result of a staff secondment from Ofcom to the NSPCC - an active member of CHIS. It has the status of an evaluation of the Code and of the IMCB's Framework conducted independently of industry.

Overall, we find the Code to be effective in restricting young people's access to inappropriate content and a good example of industry self-regulation. Based on interviews with operators and stakeholders, we believe that the Code and Framework are understood and readily adopted by all concerned.

We also note that the mobile industry has made significant investment in the development and implementation of content controls and has taken significant steps to enforce compliance, over and above the requirements set out in the Code. The mobile operators have established a process whereby an initial breach of the Code by a commercial content provider results in a warning (yellow card), and any subsequent breach of the Code can result in a sanction (red card). Repeated failure to comply with the Code may lead to termination of future business. The yellow/red card scheme is viewed both by the mobile operators and the content suppliers as a highly effective compliance mechanism. We noted comments from content providers which suggested that operators move swiftly to block content, especially where there is doubt over its suitability for a younger audience. We see benefits for the industry in a wider sharing of information to alert operators about possible compliance breaches. We recommend that the industry considers formally forwarding to the IMCB all information about the number of yellow and red cards issued, and that this information is published on the IMCB website.

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<sup>1</sup> Ofcom's Media Literacy Audit: Report on UK children's media literacy found that 52% of 9 year olds use mobile phones, rising to 95% of 15 year olds 2008  
[http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/ml\\_childrens08/ml\\_childrens08.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/ml_childrens08/ml_childrens08.pdf)

<sup>2</sup> *Children, Young People & Online Content, Ofcom October 2007*

<sup>3</sup> Formed in 2000 The Children's Charities Coalition on Internet Safety ("CHIS") comprises of seven UK children's charities. CHIS advises and campaigns on a range of child protection issues arising from internet and mobile phone use.

We note that key components and elements of the Code and Framework implementation have, arguably, influenced the European Union's *European Framework for Safer Mobile Use by Younger Teenagers and Children*<sup>4, 5</sup>.

In order to establish the quality of information and advice given to consumers, Ofcom commissioned a market research company to undertake a 'mystery shopper' exercise. This exercise involved visiting a sample of each of the mobile network operators' retail outlets around the country, together with independent retail outlets and by calling operators' customer help lines. We find that the availability of consumer information about how to restrict access to 18-rated material is generally poor – only 15% of adults who use a mobile and who have a child in their household are aware of age verification systems<sup>6</sup>. We therefore recommend that mobile operators redouble their efforts to ensure that the information supplied by retailers, customer services and websites is easy to understand and accessible. This is particularly important where the default setting for content controls is 'off'. Furthermore, a greater degree of prominence on operators' websites and a collaborative approach, such as the use of agreed common messages, website iconography and terminology, would greatly improve the consistency of information to customers.

While the Code does not require mobile operators to record the number of complaints received from customers regarding access to inappropriate material, this Review requested information about the numbers of complaints regarding child access to 18-rated material from mobile operators. The mobile operators were unable to supply reliable complaint data in this regard. None of the mobile phone companies specifically records complaints received about under-18 year olds accessing 18-rated material via their services. Reportedly, the mobile operators' call centre computer systems have not been configured to record this specific complaint category, due to the negligible complaint volumes. Where complaint numbers were reported to this Review, they were in single figures over the lifespan of the Code and Framework. There was no evidence of complaints about inappropriate access which required escalation within the businesses. Complaints about access to inappropriate content on mobiles are outside Ofcom's remit - enquiries received by Ofcom would be directed to the mobile operators. Academic opinion, sought on the matter of children reporting access to 18-rated material to parents/carers, suggests that children are unlikely to disclose such occurrences<sup>7</sup>. It is our opinion that consumer complaint volumes to mobile operators may not be a sufficiently reliable gauge of actual levels of child access to 18-rated material.

The Content Classification Framework is provided on behalf of the mobile phone industry by the Independent Mobile Classification Body (IMCB), a subsidiary limited company of the premium rate phone regulator PhonepayPlus. The IMCB has to date received no in-remit complaints from members of the public about any content of a nature encompassed by the Code, which has been accessed via a mobile phone. However, the basis for complaining is that consumers, in the first instance, must report their concern to their contracted mobile operator. Only where there is no satisfactory resolution to the complaint is the customer then referred to the IMCB by the mobile operator's customer services. The IMCB sees itself as primarily an industry-facing body and does not promote awareness of its existence or its functions to the public (other than through its website), nor does it advertise its complaints function to members of the public.

<sup>4</sup> "Mobile operators agree on how to safeguard kids using mobile phones" - [http://ec.europa.eu/information\\_society/newsroom/cf/itemlongdetail.cfm?item\\_id=3153](http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3153) - 06/02/2007

<sup>5</sup> European Framework for Safer Mobile Use by Younger Teenagers and Children - <http://www.gsmworld.com/gsm europe/documents/eur.pdf> - February 2007

<sup>6</sup> Media Literacy Audit, Ofcom 2008

<sup>7</sup> UK Children Go Online Sonia Livingstone & Magdalena Bober - July 2004, Page 6 "Actions on seeing online pornography"

Under its terms of reference<sup>8</sup>, the IMCB has committed to publishing annual reports and summaries of accounts, and publishes summary information about its work as part of the PhonepayPlus Annual Report. To ensure transparency and confidence of operation, we recommend that the IMCB undertakes to publishes annual reports and minutes of board meetings on the IMCB website.

This review did not evaluate the efficiency of the mobile operators' filtering technology. We recommend that to maintain confidence in the application of the Code and Framework, the industry considers periodic, independent evaluation, both of mobile commercial content rating and of mobile internet content filtering. We recommend that the IMCB commissions these audits and publishes the findings on its website.

We note that the mobile operators have announced their intention to review the Code and have published a consultation to input into their review<sup>9</sup>. We recommend that consideration be given to a regular review of the Code, to ensure that it is effective in addressing new challenges.

The current arrangements block access to 18-rated material to non-age-verified customers. With increasing numbers of younger children having access to mobiles capable of accessing AV content, mobile operators may need to consider if a binary system at 18 provides sufficient protection from inappropriate content for younger users, or whether a more granular system should be considered.

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<sup>8</sup> Page 3, Annex 2 "UK code of practice for the self-regulation of new forms of content on mobiles"

<sup>9</sup> [http://www.mobilebroadbandgroup.com/documents/mbg\\_cont\\_code\\_rev\\_condoc\\_080808.pdf](http://www.mobilebroadbandgroup.com/documents/mbg_cont_code_rev_condoc_080808.pdf)

## Section 2

# Introduction

With the advent of third generation (3G) mobile phones, additional functionality over and above basic mobile phone services is now available. Extended functionality includes colour screens, video playback, internet access and games.

The Mobile Broadband Group (MBG), an industry body established to represent the UK mobile network operators (O2, Orange, T-Mobile, Vodafone, 3 and 'virtual' network operator Virgin Mobile), anticipating these new mobile services, set out to consult industry, regulators and stakeholders with a proposal to establish a self-regulatory code of practice. The resultant code: *UK Code of practice for the self-regulation of new forms of content on mobiles* referred to hereafter as 'the Code', described key undertakings that the mobile operators would adopt. The Code is reproduced at Annex 2 within this document.

The main provision of the Code was to classify adult, commercially available content that could be accessed by mobile phones as suitable only for those users over 18 and to restrict access to such content for anyone unable to verify their age as being over 18. A further provision of the Code was to introduce internet content filtering, to be broadly analogous to the mobile content classification described above; i.e. restricting access to internet material suitable only for an adult audience.

The Framework applies to several types of commercial content - still pictures, video and audio-visual material, and mobile games.

Content accessed via the Internet or WAP where the mobile operator is providing connectivity only falls outside IMCB's remit and Classification Framework as do the following service types:

- Text, audio and voice-only services, including where delivered as a Premium Rate Service and regulated by PhonepayPlus
- Gambling services (because they are age restricted by UK legislation)
- Moderated and unmoderated chat rooms (commercial unmoderated chat rooms will sit behind Access Controls, however)
- Location-Based Services (which are the subject of a separate mobile operator Code of Practice)
- Content generated by subscribers, including web logs

If any of these services are charged for using premium rate then they are subject to the Code of Practice issued by PhonepayPlus - the premium rate regulator.

Peer-to-peer services such as file-sharing from mobile handsets using Bluetooth and personal communications are also outside the scope of the Code, the Framework and this Review.

A not-for-profit company, the Independent Mobile Classification Body ("IMCB"), was formed to provide and administer a Classification Framework by which content providers could self-classify commercial mobile content. IMCB Ltd is a subsidiary company of PhonepayPlus. The IMCB's duties are outlined in section 4 of this document.

Since implementation in February 2005, the Code has not been formally reviewed or independently audited. During 2007, Ofcom was approached by The Children's Charities'

Coalition for Internet Safety (CHIS)<sup>10</sup> which requested a review of the Code. This Review of the Code was achieved with the support of the Home Office and CHIS, and as a result of a staff secondment from Ofcom to the NSPCC - an active member of CHIS. This Review therefore has the status of an independent evaluation of the Code and of the IMCB Framework, which are self-regulatory instruments. Ofcom believe it is timely to review the Code and the Framework to ensure that they are still applicable and effective in providing a mechanism to restrict access to age-inappropriate mobile content and other key undertakings e.g. the provision of consumer information. Ofcom undertook this Review from November 2007 to June 2008.

This Review's scope was to establish the level of implementation and effectiveness of the provisions of the Code, and, if necessary, to make recommendations to feed into a review of the Code and supporting Framework which will be undertaken by the industry in Summer 2008. In addition, this Review comments on the effectiveness of these arrangements as a model for self-regulation.

Ofcom research in 2007<sup>11</sup> found that mobile phones are used by 7% of 8-17 year olds to access the internet – this is driven by the older age groups, specifically 16-17 year olds (14% of whom access the internet via a mobile phone). It was not our intention in the Review of the Code to measure the efficiency of the operators' internet filtering technology. Proper assessment of those technologies would require operators to establish a technical specification and an independent testing regime of a kind outlined in the recently published BSI PAS 74<sup>12</sup> relating to internet filtering technology. Mobile operators' internet filters have not been assessed as to whether they meet the requirements of PAS 74. During the Review of the Code we were not presented with any evidence that the internet filters allowed young people to access content suitable only for those over 18. We would ask the operators to consider independent testing of the efficiency of their internet filters with the intention of ensuring that they remain effective at blocking all categories of content listed in the Code.

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<sup>10</sup> Formed in 2000 The Children's Charities Coalition on Internet Safety ("CHIS") comprises of seven UK children's charities. CHIS advises and campaigns on a range of child protection issues arising from internet and mobile phone use.

<sup>11</sup> *Children, Young People & Online Content*, October 2007

<sup>12</sup> <http://www.bsigroup.com/en/Shop/Publication-Detail/?pid=000000000030130591>  
PAS 74:2008 Internet safety. Access control systems for the protection of children online.



## Section 3

# Background

### 3.1 Mobile operator content code implementation

A cornerstone of the Code is the ability of mobile operators to block access to materials and services deemed suitable only for those aged 18 and over.

#### **Mobile and internet content**

Audio-visual content available on mobiles arises from two sources. Some content is provided directly by the operator and its third party commercial partners (and is referred to in the Code as 'commercial content') and is under the operator's control due to contractual arrangements with the content creator/supplier. This notion applies irrespective of content origin i.e. commercially-produced or user-generated content where a commercial relationship exists and the content is delivered via the mobile platform.

The other source of content is from websites. This content is outside the editorial control of the operator (and is referred to in the Code as 'internet content')

#### **Age verification**

Age verification is the process by which a customer demonstrates he or she is aged over 18 in order to access 18-rated content. An example of the age verification process used by mobile operators is a nominal credit card transaction, usually for £1, which is subsequently credited to the holder's mobile bill. Age verification using credit cards can be conducted via automated systems, by placing a call to the respective operator's customer service number or through an in-store visit.

Credit cards are, ordinarily, only available to people aged 18 and over. We note the emergence of 'pre-paid' credit payment cards. We have been unable to substantiate the impact of these cards on mobile operators' age verification processes but we are aware that operators are taking steps to identify the number sequences used for these cards and disallow them for the purposes of age verification.

Other age verification methods include credit reference searches and face-to-face in-store checks of documentation such as passports, photo driving licences, utility bills etc.

#### **Content controls**

If a person attempts to access 18-rated material and has not demonstrated to the mobile operator that they are 18 or over, access will be blocked and they will be prompted to verify their age.

#### **Default content controls put in place by operators**

All mobile operators have mobile commercial content controls set to default 'on' at the time of purchase for pay-as-you-go customers. All but one have the same policy for contract customers.

In relation to mobile internet content filtering, all operators except one have this default 'on' at the time of purchase for pay-as-you-go, and two operators have content controls set as 'off' for contract customers.

If content controls are switched 'on' and a consumer who has not verified his or her age as being over 18 attempts to access content rated as 18, that access will be blocked. The consumer will then be prompted to verify their age in order to be able to access the material.

## Section 4

# Review scope and findings

## 4.1 Mobile content

### Scope

In order to establish the scale of the issue of children accessing inappropriate content on mobiles, and the effectiveness of the mobile operators' complaints handling, we sought to:

- record the number of complaints received each year regarding child access to inappropriate content on mobiles between 2003 – 2006;
- review a sample of complaints supplied by operators, and their resolution;
- review complaints escalated to the IMCB; and
- verify implementation of internet content filtering on mobiles (not its effectiveness).

In order to establish the quality of information and advice given to consumers, Ofcom commissioned a market research company to undertake a 'mystery shopper' exercise. This exercise involved visiting a sample of each of the mobile network operators' retail outlets around the country, together with independent retail outlets and by calling operators' customer help lines.

In order to understand industry's compliance with the Code, the operation of the Framework and emerging issues we interviewed a range of stakeholders including content producers and aggregators, regulatory bodies and children's charities (see Annex 1).

### Findings

The Code requires no undertaking from the mobile operators to record the number of complaints received from customers regarding access to inappropriate material.

Therefore the mobile operators had difficulty in fulfilling our request to supply complaint volume data regarding child access to content deemed suitable only for people aged 18 and over. Reportedly, the mobile operators' customer relationship management systems are not configured to capture separately complaints regarding inappropriate access, as very few complaints are received about this issue. Where figures were supplied, they were arguably outside of the scope of the Framework, and were in single figures. As a result, we were not able to review the handling of complaints or their resolution.

Furthermore, due to the personalised and portable nature of mobile phones, there is evidence to suggest that young people are unlikely to inform either parents, teachers or mobile operators when they have been exposed to adult-orientated material, whether mobile internet or mobile content.<sup>13</sup> It is our opinion that the volumes of consumer complaints to mobile operators may not be a sufficiently reliable gauge of child access to 18-rated material.

The IMCB will consider complaints relating to mobile content received from members of the public or content providers regarding mobile content misclassification. In the first instance the complainant must complain to the mobile operator responsible. The mobile operator has

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<sup>13</sup> *UK Children Go Online* Sonia Livingstone & Magdalena Bober - July 2004, Page 6 "Actions on seeing online pornography"

28 days to respond formally to the complaint. In the event of non-response or dissatisfaction, the complainant may take his or her complaint to the IMCB for hearing and adjudication.

At the time of the Review, no complaints had been escalated to the IMCB from members of the public regarding mobile content classification.

One adjudication between a mobile operator and content provider relating to the rating of content has been published since the inception of the Framework. The decision document is available to download from the IMCB website<sup>14</sup>.

### **Verification of mobile internet content filtering**

Each of the mobile operators submitted documentation to the Review describing the configuration and deployment of internet filtering controls. All mobile operators offer internet filtering, as required by the Code. Most use commercially available internet filtering systems which operate predominately on categorised Uniform Resource Locator (URL) lists, supplied either by the software vendor or by third parties<sup>15</sup>. One operator is in the process of supplementing the current platform, which relies on 'white lists'<sup>16</sup>, with a commercial platform.

While outside the scope of this Review, we note that all of the operators are in receipt of the Internet Watch Foundation (IWF) list, which contains web addresses or URLs of known websites carrying images of child abuse. This list, when used in conjunction with other technical controls, facilitates the blocking of access to such sites. All the mobile operators make use of the IWF URL list.

## **4.2 Independent Mobile Classification Body**

### **Scope**

We undertook to review the operation of the Independent Mobile Classification Body (IMCB).

### **Findings**

The IMCB, a subsidiary company of PhonepayPlus, operates and administers the Classification Framework on behalf of the six UK mobile phone operators. A copy of the Framework can be accessed via the IMCB website [www.imcb.org.uk](http://www.imcb.org.uk).

### **The IMCB's role**

The IMCB Guide and Framework document states that the IMCB has the following specific duties:

- To provide and maintain the Classification Framework, after consultation with the Mobile Operators and other stakeholders.

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<sup>14</sup> <http://www.imcb.org.uk/assets/documents/IMCB%20decision%20-%20for%20publication.5.5.05.doc> IMCB Decision - 21 April 2005

<sup>15</sup> For the sake of confidentiality and to preserve the integrity of filtering solutions, this review does not disclose specific details of a mobile operator's choice of internet filtering platforms. Such disclosure may lead to attempts to bypass these controls.

<sup>16</sup> A whitelist is a list of accepted items or persons in a set. This list is inclusionary, confirming that the item being analyzed is acceptable. It is the opposite of a blacklist which confirms that items are not acceptable. Most commonly, these are related to computer blacklists. (Wikipedia)

- To review and amend the Classification Framework, after consulting the Mobile Operators and other stakeholders in light of changes in the law or changes in society's expectations. Evidence for this may come from consumer and public complaints, changes in standards by the Agreed Bodies or research.
- To publish information about the role and work of IMCB through an IMCB website and other appropriate means and, as part of this activity, to publish an annual report and summary of accounts.
- To deal with all complaints and disputes about the misclassification of commercial content, in accordance with the complaints and dispute procedures set out in the Guide and Framework document (complaints may arise from consumers or mobile content producers).
- To consult the mobile operators on the appointment of new members to the IMCB board.

### The IMCB's activity

The IMCB offers a telephone-based advice service to content producers about classification. Figure 1 provides a breakdown of activity for 2006 and 2007.

**Figure 1: Breakdown of IMCB classification advice for 2006 and 2007**

<b>2006</b>			<b>2007</b>		
<b>ADVICE - Month – 2006</b>	<b>Total Number of Requests</b>	<b>Not Within Remit</b>	<b>ADVICE - Month - 2007</b>	<b>Total Number of Requests</b>	<b>Not Within Remit</b>
January	4	1	January	5	1
February	7	0	February	3	0
March	4	0	March	5	2
April	0	0	April	2	0
May	1	0	May	3	0
June	6	0	June	6	1
July	4	1	July	5	0
August	3	1	August	1	0
September	3	2	September	2	0
October	5	0	October	3	0
November	3	0	November	1	0
December	2	1	December	1	0
<b>TOTAL</b>	<b>42</b>	<b>6</b>	<b>TOTAL</b>	<b>37</b>	<b>4</b>

Figure 2 below gives a breakdown of the content categories in which advice from IMCB has been sought since October 2006:

**Figure 2: Breakdown of content categories in which IMCB has provided advice**

<b>Category</b>	<b>Number of Requests</b>	<b>Category</b>	<b>Number of Requests</b>
Sex and/or nudity	14	Sex and/or nudity	9
Violence	0	Violence	0
General	3	General	8
Nudity and language	0	Nudity and language	0
Nudity and violence	0	Nudity and violence	0
Imitable tech	2	Imitable tech	0
Unclassified	17	Unclassified	16
<b>TOTAL</b>	<b>36</b>	<b>TOTAL</b>	<b>33</b>

The IMCB website is the primary information resource for consumers and mobile content providers concerning issues related to the Code and Framework.

This Review established that:

- one adjudication decision document is posted on the IMCB website<sup>17</sup>;
- the IMCB has received no complaints from the public during the requested period;
- the IMCB has not undertaken a review or amended the Classification Framework;
- no annual accounts are published/posted on the IMCB website; and
- no minutes of board meetings were available via the website;

We consider that a fair comparison exists between the Framework and the BBFC (British Board of Film Classification) guidelines<sup>18</sup> for 18-rated content, with particular reference to the categories contained with the IMCB Framework:

- Language
- Sex
- Nudity
- Violence
- Drugs

<sup>17</sup> IMCB decision - for publication.5.5.05.doc  
<http://www.imcb.org.uk/assets/documents/IMCB%20decision%20-%20for%20publication.5.5.05.doc>  
 April 21 2005 Netcollex Ltd Vs Vodafone – nudity

<sup>18</sup> British Board of Film Classification – Guidelines -  
<http://www.bbfc.org.uk/downloads/pub/Guidelines/BBFC%20Guidelines%202005.pdf>

- Horror
- Imitable techniques

### 4.3 Information for customers regarding content controls

#### Mobile operators' websites

Operators have undertaken a number of initiatives to disseminate information to consumers (e.g. [www.teachtoday.eu](http://www.teachtoday.eu)). However, this Review examined only the mobile operators' websites for material relating specifically to the Code and Framework, and in particular the prominence of, and ease of finding, information about this issue that is relevant to customers. All the mobile operators had information on their website. However, we noted a wide variation in the prominence and levels of information available. Ofcom research finds that just 15% of adults who use a mobile and who have a child in their household are aware of age verification systems<sup>19</sup>.

#### Mystery shopper exercise

Section 6 of the Code states: "Information and advice. Mobile operators will provide advice to customers - including children, parents and carers - on the nature and use of new mobile devices and services, and support other relevant media literacy activities designed to improve the knowledge of consumers."

In order to establish the quality of information and advice given to consumers, Ofcom commissioned a market research company to undertake a 'mystery shopper' exercise. This exercise involved visiting a sample of each of the mobile network operators' retail outlets around the country, together with independent retail outlets and by calling operators' customer help lines.

The mystery shopper exercise was intended to gauge the availability and quality of information supplied to consumers regarding mobile phone content controls.

The following elements were qualitatively assessed and scored during the mystery shopper exercise:

- interaction with customers;
- overview of experience; and
- staff knowledge and understanding of the content controls in place.

#### Mystery shopper in-store visits

A total of 160 separate in-store visits were made, including 20 for each mobile operator. Two leading independent mobile phone retailers' outlets were also visited, to test the information available there.

The scenario used during the mystery shoppers' visits to the stores was:

*"I got my 12 year old a mobile phone for Christmas, and I am a little worried that he/she will be able to download material from the internet which is not suitable. Is there anything I can do about it?"*

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<sup>19</sup> Media Literacy Audit, Ofcom 2008

One store for each brand was identified in each of the following locations. Two visits were made to each store, one on a weekday and one at the weekend. In total, 160 in-store interactions were recorded.

Cambridgeshire	Devon	Dorset	East Yorkshire	Lancashire
London	Kent	Scotland	Wales	West Midlands

### **In-store finding summary**

For the face-to-face in-store visits, the exercise found that:

- Of the 160 visits to stores:
  - 11 offered no advice (nearly 1 in 10<sup>20</sup>)
  - 72 gave a detailed explanation of how child protection systems work (over 4 in 10)
  - 36 gave a limited explanation of how child protection systems work (over 2 in 10)
  - 41 gave no explanation of how child protection systems work (nearly 3 in 10)

Although this was a small-scale qualitative survey we found that:

- Independent retailers are less likely to offer an explanation of the Code and are more likely to advise customers to contact the mobile operator's customer services.
- There was little discernable difference in the quality of advice given at weekends, when part-time staff are likely to be working, compared to weekdays.
- There was little customer information visible in the stores – this was absent in 151 of the 160 store visits.
- In only five visits was printed information given to the customer.
- The Code was explained in detail in five visits and received a mention in a further seven visits.
- The average time taken to explain content controls was just over three minutes.

### **Phoning customer services**

The market research organisation that conducted the mystery shopper exercise made 15 calls to each mobile operator's customer services (a total of 90 calls).

The scenario used for the telephone interactions was:

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<sup>20</sup> The mystery shopper findings are from qualitative research - while it is believed that these findings will make a useful contribution to the debate in this area, the results of the qualitative research should not be used to draw statistically robust conclusions.

*“I am thinking about buying a phone for my 12 year son/daughter, and I’m a little worried that he/she will be able to download material from the internet which is not suitable. Is there anything I can do about it?”*

## **Summary of call findings**

Overall, the information received during calls to mobile operators’ customer services was determined by the market research company to be marginally better than that received during in-store interactions.

- Of the 90 calls to customer service departments:
  - one was unable to help (less than 1 in 10)
  - 41 gave a detailed explanation of how child protection systems work (over 4 in 10)
  - 41 gave a limited explanation of how child protection systems work (over 4 in 10)
  - seven gave no explanation of how child protection systems work (nearly 1 in 10)

The average length of each call was two minutes.

## **4.4 Industry stakeholder comments**

The following is a summary of comments gathered during interviews with industry stakeholders. A list of participants is given in Annex 1. In order to promote candidness, the interviews were conducted in confidence (on the understanding that the comments given would not be directly attributable to any individual or organisation). We have grouped together stakeholders by type, by involvement with the Code and Framework, and by their wider understanding of pertinent issues such as mobile content production, classification and child protection.

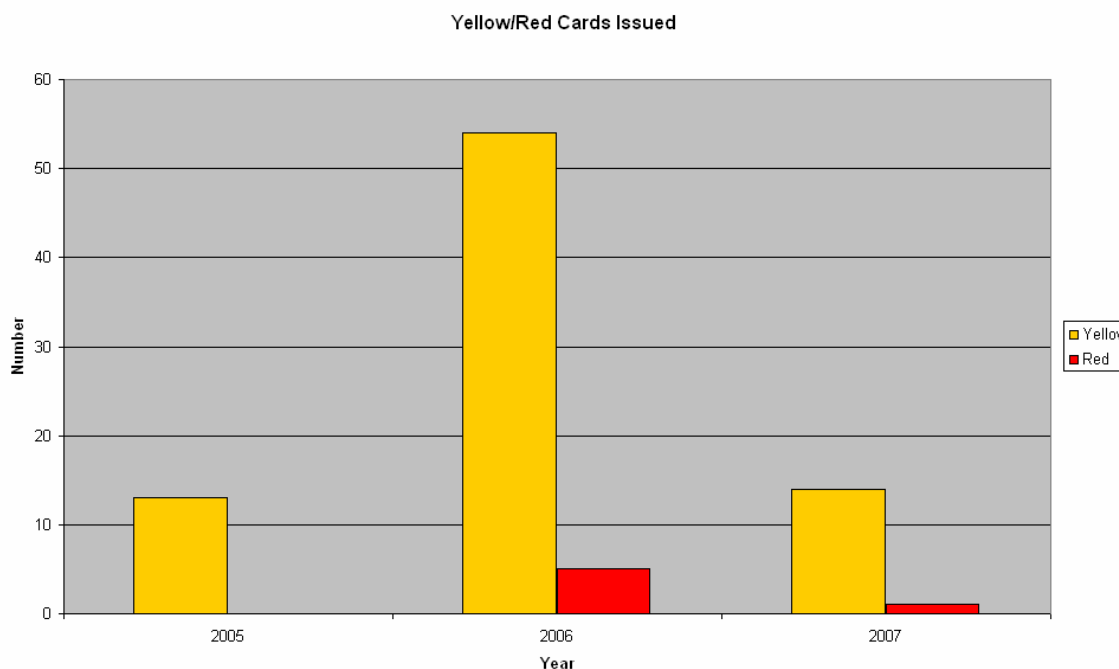
### **Content producers and aggregators**

The Code and Framework are generally well understood and readily adopted both by content producers and by aggregators. Since inception there has been only one IMCB ruling published regarding a dispute between a content provider and a mobile operator over the classification of an item of content.

The mobile operators enforce the application of the Framework by performing spot-checks of content. If 18-rated content is discovered to be accessible and available without age verification a ‘yellow card’ is issued to the content provider or aggregator. This serves as a warning and take-down notice. It prevents the producer or aggregator collecting revenue for the content supplied through the mobile operator’s network. Further failure to remedy and comply with the Code will lead to a ‘red card’ being issued and may lead to barring of either the aggregator or, more typically, the content producer, until satisfactory compliance is in place. The mobile operators informally share information about yellow/red card issues among themselves.

The yellow/red card system was designed primarily to encourage premium rate phone regulation compliance. Its use has been extended to cover issues arising from the Framework. Mobile operators, through their industry body the Mobile Broadband Group (MBG), supplied data to this Review for yellow/red cards issued against perceived breaches of the Framework. Figure 3 shows the information gathered by the MBG from its membership.



**Figure 3: Summary of yellow/red cards for content classification breaches**

### Child protection and media professionals

Overall, the Code is welcomed and considered as a good example of industry self-regulation. However, there are perceived gaps in parental awareness of content controls. Guidance relating to managing user-generated content and social networking sites on mobile platforms was considered important by some stakeholders and suggested for inclusion in the next review of the Code.

The binary nature of the Code (i.e. either 18-rated material or not) allows younger children to access material which, while not subject to access controls, may be inappropriate and cause concern among parents and carers.

An awareness-raising programme, aimed both at schools and parents, would be welcomed. It was suggested that direct communication to a consumer's handset might also be helpful in raising awareness of the availability of content controls.

### Regulatory and industry bodies

Overall, the Code and the Classification Framework are perceived as a sound basis on which to restrict access by young people to material suitable only for those aged 18 and over.

While the BBFC and PEGI classification schemes cater for a number of age ranges, the Code (with a single classification of 18) provides less flexibility for consumers, parents and content providers. It is possible under the current mobile content controls for a 9 year old child to access material deemed by the BBFC framework as suitable only for children older than 12 or 15 years. Age-inappropriate content could include suggestive underwear modelling, topless imagery and moderate violence, all of which are outside the current IMCB Classification Framework.

Age verification for film, video and PC games content typically occurs at the point of purchase i.e. within the cinema or shop. Access to mobile content does not involve this

safeguard so is more reliant on a robust age-verification regime.

The lack of a UK-wide recognised method of age verification for under-18s has been cited as preventing the practical implementation of a robust scheme restricting access to lower age-rated content (i.e. under 11). Some interviewees mentioned that the voluntary Citizen Card<sup>21</sup> was primarily conceived to prevent retail sale or access to services or goods which are age restricted. The scheme allows parents/carers to register children under 16 to receive a Citizen Card.

A potential risk is caused by the “hand-me-down effect”, whereby an adult changes their handset and passes his or her old handset and related account to a child. The extent of this activity is unknown. If the handset/mobile account has already been verified as being used by an adult, any age restricted content will be available on the phone. As stated in section 3.1, initial age verification takes place via credit card transactions, credit reference checks and in-store verification.

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<sup>21</sup> <http://www.citizencard.com/about.php>

## Section 5

# Recommendations

## 5.1 Overview

Based on the findings of this Review, we believe that the Code and Framework are effective in restricting young people's access to material suitable only for adults. The Code is understood and readily adopted by all significant stakeholders. In addition, we consider the Code to be a good example of industry self-regulation.

We note that key components and elements of the Code and Framework implementation have, arguably, influenced the *European Union European Framework for Safer Mobile Use by Younger Teenagers and Children*.<sup>22, 23</sup>

The mobile network operators have announced their intention to review the Code and have published a consultation to input into their review. We make the following recommendations for consideration by the mobile industry for inclusion in the Code review.

## 5.2 Mobile network operators

To verify and monitor the implementation and effectiveness of the measures in place to restrict access to 18-rated content on mobiles, we recommend that the industry considers:

- independent periodic testing of the effectiveness of internet filtering and content controls, publishing findings on the IMCB website;
- formalising sharing yellow/red card data with other operators and IMCB;
- redoubling efforts to ensure that information about content controls supplied by retailers, customer services and websites is accessible and easy to understand, particularly where the content controls are set in the 'off' position by default;
- reviewing the prominence, ease of access and clarity of information provided on mobile operators' websites;
- seeking to establish the age of a phone user during sales transactions;
- the child safety implications of user-generated content and social networking sites in the operators' review of the Code. Due consideration should be given to recently published Home Office<sup>24</sup> social networking guidance; and
- whether a binary system at 18 provides sufficient protection from inappropriate content for younger users or if a more granular system should be considered.

<sup>22</sup> Mobile operators agree on how to safeguard kids using mobile phones - [http://ec.europa.eu/information\\_society/newsroom/cf/itemlongdetail.cfm?item\\_id=3153](http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3153) - 06/02/2007

<sup>23</sup> European Framework for Safer Mobile Use by Younger Teenagers and Children - <http://www.gsmworld.com/gsm europe/documents/eur.pdf> - February 2007

<sup>24</sup> Good practice guidance for the providers of social networking and other user interactive services 2008 <http://police.homeoffice.gov.uk/publications/operational-policing/social-networking-guidance?view=Binary> - 04 April 2008

### **5.3 Independent Mobile Classification Body**

To ensure transparency in the operation of the Code and Framework we would ask the IMCB to comply with its responsibilities to:

- publish minutes of board meetings on its website; and
- publish an annual statement of accounts on its website.

In addition, to demonstrate Code compliance, we recommend that the IMCB formally receives data from mobile operators on the nature and volume of yellow and red cards issued. We recommend that the IMCB publishes annually, on its website, information pertaining to yellow/red cards, to demonstrate the effectiveness of self-enforcement of the provisions of the Code.

## **Annex 1**

# List of Review participants/interviewees

**We would like to thank the following Review participants for their respective contributions.**

### **Academia**

Professor Sonia Livingstone - Department of Media and Communications, London School of Economics

### **Child Protection**

Child Exploitation and Online Protection Centre (CEOP)  
Childnet International  
Children's Charities Coalition on Internet Safety (CHIS)  
National Society for the Prevention of Cruelty to Children (NSPCC)

### **Mobile operators**

O2  
Orange  
Three  
T-Mobile  
Virgin Mobile  
Vodafone

### **Industry & regulatory bodies**

British Board of Film Classification (BBFC)  
Independent Mobile Classification Body (IMCB Ltd)  
Internet Watch Foundation (IWF)  
Mobile Broadband Group  
Video Standards Council (VSC)

### **Content Producers & aggregators**

Cherry Media Holdings  
D2See  
MX Telcom  
Netcollex /Interactive World  
Peekaboo TV Ltd  
Twistbox Entertainment Ltd  
Win Plc  
Zamano Plc

## Annex 2

# UK code of practice for the self-regulation of new forms of content on mobiles

## UK code of practice for the self-regulation of new forms of content on mobiles

© December 2003 O2 (UK) Ltd, Orange Personal Communications Services Ltd, T-Mobile UK Ltd, Virgin Mobile Telecoms Ltd, Vodafone Ltd, Hutchison 3G UK Ltd.

### Introduction

This Code of Practice has been developed by Orange, O2, T-Mobile, Virgin Mobile, Vodafone and 3 (referred to collectively in this Code as 'the mobile operators') for use in the UK market. The background to the Code is that, increasingly, mobile devices are available with enhanced features, including colour screens, picture messaging, video cameras and Internet browsers and can be used to access a growing variety of content.

In anticipation of these products being widely adopted by consumers, including consumers under the age of 18, the mobile operators are putting in place the measures described in this Code. The intention is that parents and carers should have access to the information with which they can show their children how to use new mobile devices responsibly and the power to influence the type of content they can access.

The Code covers new types of content, including visual content, online gambling, mobile gaming, chat rooms and Internet access. It does not cover traditional premium rate voice or premium rate SMS (texting) services, which will continue to be regulated under the ICSTIS Code of Practice.

The Code does not cover peer to peer communications but it does give assurances to customers that the mobile operators are taking action to combat illegal, bulk and nuisance communications.

This Code provides a basic common framework and does not prevent mobile operators and content providers from adopting different commercial and brand positions with respect to the content and services they supply, providing these are consistent with the overall provisions of the Code. Each mobile operator may choose or need to use different organisational and technical solutions to enable it to meet aspects of the Code.

### The Code

#### 1. Commercial content

Mobile operators will appoint an independent classification body (see Glossary) to provide a framework for classifying commercial content that is unsuitable for customers under the age of 18. The framework will be consistent with standards used in other media and only treat as 18 content that would receive an 18 type classification for the equivalent material in, for example, magazines, films, videos and computer games.

Commercial content providers will be required to self-classify as 18 all content unsuitable for customers under the age of 18, in accordance with the Framework. This requirement does not apply to premium rate voice or premium rate SMS (texting) services, which will continue to operate under the ICSTIS Code of Practice.

#### 2. Internet content

Mobile operators have no control over the content that is offered on the Internet and are therefore unable to insist that it is classified in accordance with the independent classification

framework.

Mobile operators will therefore offer parents and carers the opportunity to apply a filter to the mobile operator's Internet access service so that the Internet content thus accessible is restricted. The filter will be set at a level that is intended to filter out content approximately equivalent to commercial content with a classification of 18.

### **3. Illegal content**

Mobile operators will work with law enforcement agencies to deal with the reporting of content that may break the criminal law. Where a mobile operator is hosting content, including web or messaging content, it will put in place notify and take-down provisions.

### **4. Unsolicited bulk communications**

Mobile operators will continue to take action against unsolicited bulk communications (i.e. spam), including text messages, picture messages and e-mails.

### **5. Malicious communications**

New forms of content may give rise to additional sources of malicious communications. The mobile operators will continue to deal vigorously with such matters, adapting existing procedures as appropriate.

### **6. Information and advice**

Mobile operators will provide advice to customers - including children, parents and carers - on the nature and use of new mobile devices and services and support other relevant media literacy activities designed to improve the knowledge of consumers.

Information on the Code will be available on the web site of each mobile operator.

### **7. Other legislation, regulation and classification**

Nothing in the Code conflicts with mobile operators' or content providers' responsibilities to abide by all relevant legislation and regulation.

All content that is supplied through a Premium Rate Service must abide by the ICSTIS Code of Practice.

All those that deliver advertising or promotion through the medium of a mobile device must abide by all relevant Data Protection legislation, including the Privacy and Electronic Communications (EC Directive) Regulations 2003

Nothing in the Code prevents mobile operators from providing, for information purposes, further divisions of commercial content classification, where they deem that such an approach would be useful to customers in assessing the age range for which content is designed (e.g. for computer games).

### **8. Implementation and administration**

The mobile operators take responsibility for the implementation and administration of the Code. They will keep the Code under review and make changes, where this is seen as necessary for the Code to remain relevant to customers.

Each mobile operator will enforce the terms of the Code through its agreements with **commercial content providers**.

Where new **commercial content** classified as 18 is offered, the mobile operator will deliver it in accordance with the Code.

It is anticipated that filtering for Internet content will be available from mobile operators during 2004.

Processes for dealing with illegal content will be agreed with law enforcement agencies by the end of April 2004 and implemented during 2004.

## Glossary

**Access controls** – methods of preventing unrestricted access to content, including barring, PIN controlled access and subscription only services.

**Age verification** – a process by which reasonable and practical steps are taken to verify that a customer is 18 or over. Acceptable methods of age verification include: –

a) at point of mobile device sale for new customers: inspection of document containing customer's date of birth (e.g. Driving licence, Citizen Card etc.); visual check (is the customer clearly over 18?);  
b) "customer not present": a valid credit card transaction for the customer; age confirmation using 3<sup>rd</sup> party agencies (e.g. Experian or Dun & Bradstreet etc.);

c) documents and/or process used for contract mobile phone customers, combined with a process by which customers can manage access controls.

**Commercial content** – means content provided by commercial content providers to their mobile customers. Mobile operators act as the delivery and access provider and thus exercise an element of commercial control over the content delivered. Commercial content includes pictures, video clips, mobile games, music, sounds and experiences such as gambling. It does not include content accessed via the Internet - where mobile operators are providing only the connectivity.

**Commercial Content provider** – a mobile operator, or a provider having a contractual relationship with a mobile operator, supplying content to customers through a mobile device.

**Chat Room** – A chat room is a virtual environment where people can communicate with others, including people they don't know, by exchanging written words or images (for example, through **WAP** or **SMS**). The term does not encompass a commercial text service where a person communicates only with a (premium rate) SMS service provider. A **moderated chat room** is a chat room where either a person or special technology is used to block personal details and keep conversation appropriate.

**Filter, filtering** – a technical way of reducing the likelihood of unwanted material being accessed via the Internet. Methods include blocking sites with certain key words or sites that appear on 'black lists' or sites that do not contain an ICRA label. The filter will be applied at the network level, not the mobile device level, and will be simple for the customer to invoke.

**ICSTIS Code of Practice** – ICSTIS (Independent Committee for the Supervision of Telephone Information Services) is a co-regulatory body that has responsibility for the regulation of premium rate services delivered over electronic communications networks. The ICSTIS Code of Practice can be found at [www.icstis.org.uk](http://www.icstis.org.uk).

**Independent classification body** – This body's role will be to define classification criteria for **18** content that is consistent with other media; to provide advice to commercial content providers on whether an item of content should be classified **18**, in accordance with the classification framework; to investigate complaints of mis-classification and make determinations on those complaints. The body shall provide a process for appealing such determinations. The determinations of the body will be enforced by the mobile operators through their commercial contracts with content providers. The mobile operators will take responsibility for all other aspects of the Code.

**Internet content** – content accessed on the Internet (including sites that can be accessed using **WAP**), where the mobile operator provides only connectivity and cannot exercise commercial influence over the type of content supplied to the customer.

**SMS** – Short message service – the official description of the service known as 'text/texting'.

**WAP** – Wireless application protocol – a protocol used by mobile phones to browse either commercial or Internet content.



**Annex 3**

# **IMCB Guide and Classification Framework for UK Mobile Operator Commercial Content Services**

## **Independent Mobile Classification Body**



## **IMCB Guide and Classification Framework for UK Mobile Operator Commercial Content Services**

**First Edition February 2005**

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## Introduction

## General overview of IMCB

### Background to IMCB and the Mobile Operator Code of Practice for New Content Services

On 19<sup>th</sup> January 2004 the UK Mobile Operators<sup>1</sup> (Vodafone, Orange, T-Mobile, 02, 3 and Virgin) announced a joint Code of Practice for the self-regulation of new forms of content on mobile phones. The six Mobile Operators have all signed up to the code designed to facilitate the responsible use of new mobile phone services whilst safeguarding children from unsuitable content on their mobile phones. Mobile technology advances mean that phones are being developed with enhanced features, such as colour screens, video and picture messaging allowing access to an increasing variety of services. Whilst many of the Commercial Content services which are delivered using this new technology will be suitable for all ages, some of the new services may, however, contain content which is only suitable for customers who are over 18 years of age. The Mobile Operators recognise that this may cause concern to parents whose children have mobile phones and have therefore worked together to develop the Code of Practice. This is intended to help protect children and give parents and carers the necessary information and tools to protect their children. A copy of the Code of Practice for New Content Services on mobile devices is available at [www.imcb.org.uk](http://www.imcb.org.uk).

With respect to Commercial Content, the Mobile Operators specifically committed to appointing an independent classification body to provide a Framework for classifying Commercial Content that is only suitable for customers 18 years and older. IMCB is the body chosen by the Mobile Operators to perform this role.

### Terms of reference

IMCB is the Independent Mobile Classification Body responsible for setting a Classification Framework for certain new forms of mobile Commercial Content. IMCB Ltd is a not-for-profit company formed as a subsidiary of ICSTIS – the UK premium rate regulator – and Board members of IMCB have been drawn from the ICSTIS Committee. A multi-disciplinary team supports the Board. Premium Rate Services continue to be regulated by ICSTIS even where they are also Commercial Content services and need to be classified in accordance with this document.

As a body independent of the Mobile Operators, IMCB will:

- ☐ Provide and maintain the Classification Framework after consultation with the Mobile Operators and other stakeholders;
- ☐ Review and amend the Classification Framework after consulting the Mobile Operators and other stakeholders in light of changes in the law or changes in society's expectations. Evidence for this may come from consumer and public complaints, changes in standards by the Agreed Bodies or research;
- ☐ Publish information about the role and work of IMCB through an IMCB website and other appropriate means and, as part of this activity, IMCB will publish an annual report and summary of accounts;
- ☐ Deal with all complaints and disputes about the misclassification of Commercial Content in accordance with the complaints and dispute procedures set out in this document;
- ☐ Consult with the Mobile Operators over the appointment of new members to the

IMCB Board.

<sup>1</sup> Any words used with capital letters denotes a defined term and is listed in the Appendix to this document

## Remit

IMCB's remit is to determine a Classification Framework for Commercial Content against which Content Providers can self-classify their own content (whether provided directly or indirectly) as 18 where appropriate. Such content will be placed behind Access Controls so that, when combined with age verification arrangements, it is only available to those identified as 18 or over.

Commercial Content services which fall within IMCB's remit and the Classification Framework include:

- ☐ Still pictures
- ☐ Video and audiovisual material
- ☐ Mobile games, including java-based games

Services which fall outside IMCB's remit and the Classification Framework are:

- Text, audio and voice-only services, including where delivered as a Premium Rate Service and regulated by ICSTIS
- Gambling services (because they are age restricted by UK legislation)
- Moderated and unmoderated chat rooms (commercial unmoderated chat rooms will only be accessible by those 18 and over)
- Location-Based Services (which are the subject of a separate Mobile Operator code of practice available at [www.imcb.org.uk](http://www.imcb.org.uk))
- Content generated by subscribers, including web logs
- Content accessed via the internet or WAP where the Mobile Operator is providing
- connectivity only

## Classification -Overview

The classification arrangements being put in place by IMCB will provide a common standard against which Content Providers can self-classify certain of their Commercial Content as 18. The Mobile Operators will be responsible for addressing instances of misclassification of Commercial Content through their own contractual arrangements with Content Providers.

The approach being adopted is that Commercial Content deemed suitable only for those 18 and over by Content Providers by reference to the Classification Framework set out in this document will be inaccessible to those under 18. Commercial Content that is not rated as 18 is Not Classified and will be unrestricted for the purposes of this document and IMCB provides no Classification Framework for unrestricted content.

This document has been created on the basis of research and consultations with a number of stakeholders. At a later stage IMCB intends to engage stakeholders in a review of this document and will consider further the requirements set out in it. The review will be undertaken in line with IMCB's remit described above.

## The Internet

Content accessible through mobile devices available on the Internet falls outside of the remit of IMCB and these classification arrangements but the Mobile Operators have committed to

offering filter solutions to parents and carers in order to help to protect their children. The Mobile Operators have also committed to providing advice to all customers on the nature of these new services and on ways in which they can help to protect themselves and their children. Some of the literature that provides this advice is available at IMCB's website – [www.imcb.org.uk](http://www.imcb.org.uk).

### **Funding**

IMCB is funded by the Mobile Operators under a mutually agreed formula and in a way that does not fetter its independence. The funding for IMCB is wholly separate from that of ICSTIS. Summary accounts for IMCB will be published in IMCB's Annual Report.

### **Classification advice and general enquiries**

IMCB provides a non-binding classification advice service for Content Providers who require advice on whether any particular content should be rated as 18 under the Classification Framework. Where there is doubt, however, IMCB would generally suggest caution. IMCB may charge for its advice in order to recover the costs associated with providing it.

Tel: 020 7357 8512 E-Mail: [advice@imcb.org.uk](mailto:advice@imcb.org.uk)

### **Contact details**

IMCB 1<sup>st</sup> Floor, Clove Building 4 Maguire Street London SE1 2NQ

Tel: 020 7357 8512 Fax:  
020 7940 7456 E-mail:  
[staff@imcb.org.uk](mailto:staff@imcb.org.uk)

Media Enquiries: 020 7940  
7474 E-mail:  
[pressoffice@imcb.org.uk](mailto:pressoffice@imcb.org.uk) Web:  
[www.imcb.org.uk](http://www.imcb.org.uk)

## **Section One Classification Framework -General**

### **1.1 Classification Framework Structure**

The Classification Framework has been drawn up taking account of the need to be consistent, as far as is possible, with standards for other media produced by the Agreed Bodies such as the British Board of Film Classification (BBFC) and Interactive Software Federation of Europe (IFSE)/ Pan-European Game Information (PEGI) for Mobile Games.

The Classification Framework has been designed to be flexible enough to accommodate the widest possible range of Commercial Content available in the market place, where this falls within the remit of IMCB. However, the Classification Framework cannot address itself to every specific piece of Commercial Content that might become available at any one time. The specific requirements and examples described in the numbered sub-sections of Section 2 are therefore not exhaustive but instead intended as an indication of the types of content that, under the Classification Framework, should be rated as 18. Content Providers should interpret these subsections in terms of the spirit of what is being sought. When self-classifying their content, Content Providers should also have regard to the context in which the particular material is included and use the Classification Framework as a guide to assist them.

### **1.2 Scope of the Classification Framework**

The Classification Framework only applies to Commercial Content provided to UK customers of UK Mobile Operators. The Classification Framework applies regardless of whether the Content Provider is based within or outside the United Kingdom. It does not apply to locally provided services accessed whilst UK customers are “roaming” overseas; nor does it apply to overseas customers “roaming” in the UK.

### **1.3 Relationship to other bodies**

If the provision of Commercial Content is by means of a Premium Rate Service it must also comply with the code of practice issued and enforced by ICSTIS.

If the Commercial Content is to be distributed over other platforms, such as video or through a games console, and requires classification by an Agreed Body, additional classification must also be obtained.

### **1.4 Legality**

Content Providers have responsibility to ensure that the Commercial Content they are directly or indirectly providing is not unlawful or illegal.

### **1.5 Further information**

As is made clear in the Classification – Overview, the arrangements put in place will mean that Commercial Content not classified as 18 is unrestricted for the purposes of this Framework. Some parents and carers may well consider that not all material which is unrestricted for the purposes of this Framework is suitable for everyone, and in particular younger children. However, nothing in the Code of Practice for New Content Services prevents Mobile Operators, and by extension Content Providers, from providing further information or advice about the age range for which the particular Commercial Content was designed.

We recognise that parents have the main responsibility for making sure that their children are properly educated about mobile phone technology. This responsibility is supported by the Mobile Operators through their commitment to provide advice to customers on the nature and use of new mobile devices and services. To this end, they support activities designed to improve the knowledge of consumers, including parents and carers, such as the “Be Aware” leaflet produced jointly by the Mobile Operators as a teacher’s resource pack for school children.

## Section Two      Specific Classification Framework requirements

In addition to the general guidance and provisions relating to legality contained in Section 1 the following requirements shall apply to all still pictures, video and audiovisual Commercial Content, including mobile games.

Where Commercial Content contains any content described in any of the sub-sections below it must be rated as 18 for the purposes of this Classification Framework. As a general guide it should be noted that if the content in question would be likely to be rated as 18 by an Agreed Body if it was relevant to that body, then it should be rated as 18 under this Classification Framework. In addition, the context and style in which the content is being presented, whether as a still picture or a video clip, should always be taken into account. Humorous content, such as violence or combat techniques in a children's cartoon, may therefore be acceptable.

### 2.1 Themes

No theme is specifically prohibited though these may be subject to other legal requirements. Content must not actively promote or encourage activities that are legally restricted for those under 18 such as drinking alcohol or gambling.

### 2.2 Language

Frequent and repetitive use of the strongest foul language.

### 2.3 Sex

Actual or realistic depictions of sexual activity, for example,

- Real or simulated sexual intercourse.
- Depiction of sexual activity involving devices such as sex toys.
- Sexual activity with visible pubic areas and/or genitals or including threats of sexual violence such as rape.

Note, however, that material which genuinely seeks to inform and educate such as in matters of sexuality, safe sex and health and where explicit images are the minimum necessary to illustrate and educate in a responsible manner may be permissible.

### 2.4 Nudity

Nudity where depicting pubic area and/or genitals (unless it is material which genuinely seeks to inform and educate such as in matters of sexuality, safe sex and health and where explicit images are kept to the minimum necessary to illustrate and educate in a responsible manner).

### 2.5 Violence

Graphic violence which in particular dwells on the infliction of pain, injuries or scenes of sexual violence. ***In respect of mobile games in particular:***

Gross violence towards realistic humans or animals such as scenes of dismemberment, torture, massive blood and gore, sadism and other types of excessive violence.

Graphic, detailed and sustained violence towards realistic humans and animals or violence towards vulnerable or defenceless humans.



## **2.6 Drugs**

Depictions which promote or encourage illegal drug taking or which provide instructive details as to illegal drug taking.

## **2.7 Horror**

Any depiction of sustained or detailed inflictions of pain or injury including anything which involves sadism, cruelty or induces an unacceptable sense of fear or anxiety.

## **2.8 Imitable techniques**

Dangerous combat techniques such as ear-claps, head-butts and blows to the neck or any emphasis on the use of easily accessible lethal weapons, for example knives.

Detailed descriptions of techniques that could be used in a criminal offence.

## Section Three

## Complaints and dispute procedures

### Consumers

1. If you are a consumer you can make a complaint if you believe that an item of Commercial Content should have been classified as 18.
2. In order to complain you must first contact your Mobile Operator and explain the nature of your complaint. (Contact details can be found at [www.imcb.org.uk](http://www.imcb.org.uk) or click here.)
3. On receiving your complaint your Mobile Operator has 28 days to state whether it agrees that the Commercial Content you complained about should have been classified as 18.
4. Your Mobile Operator will contact you directly to advise you as to its response to your complaint.
5. If your Mobile Operator does not reply to you within 28 days from the date you made your complaint or does not agree that the classification was incorrect you can make a formal complaint to IMCB.
6. To contact IMCB either go to the website at [www.imcb.org.uk](http://www.imcb.org.uk) or write to them at:

IMCB 1<sup>st</sup> Floor, Clove Building Maguire Street London SE1 2NQ

### Content Providers

1. If a Mobile Operator decides that content you have provided should have been classified as 18 (whether or not there has been a complaint about it) and you disagree with this decision then you can, within 28 days of hearing of this decision, make a complaint to IMCB.
2. Complaints must be made either through the IMCB website or in writing to the above address.

### How IMCB deals with all valid complaints

1. On receiving a complaint the matter is considered by an IMCB board member. The board member will ask for information from all relevant parties and any other information needed to determine the case and state the time in which this should be received, which will not be longer than 28 days.
2. Once all relevant information has been received, a panel of the IMCB board ('the Panel') will consider the matter and make its decision ensuring that everybody involved has had an opportunity to respond to all the points raised.
3. Any party can request an oral hearing. If any of the parties does make such a request the Panel will consider at its discretion whether an oral hearing should be held. Such a hearing will normally be held within 28 days of that decision under the control of the Chairman of the Panel and will be held in private unless the Panel decides otherwise.

4. However the matter is dealt with by the Panel, it will provide its decision in writing to all the parties within 28 days, and its decision will be published on IMCB's website.
5. The Panel does not have powers to make any order for costs of the proceedings.

Note: Full details can be obtained from IMCB.

## **Section Four Independent appeals arrangements for Content Providers and Mobile Operators**

### **Classification Framework Appeals Body (“CFAB”)**

1. CFAB is a body of persons independent of IMCB appointed to hear appeals against decisions made by IMCB under the IMCB Complaints and Dispute Procedures. The Chairman is a qualified solicitor or barrister of not less than 10 years standing.
2. An appeal may be made on the following grounds:
  - a. the disputed decision was based on an error of fact;
  - b. the disputed decision was wrong in law or;
  - c. IMCB exercised its discretion incorrectly in reaching its decision.
3. An appeal may be commenced by either a dissatisfied Content Provider or Mobile Operator lodging with the Clerk written notification of intention to appeal within 28 days of the decision of IMCB. Attached to the notification must be:
  - a. the written determination of IMCB;
  - b. details of the service in question; and
  - c. notice of appeal setting out the grounds upon which the appeal is made and the facts and matters on which it is based.

### **Appeals Process**

- 1 The Chairman may convene a conference of relevant parties in order to give appropriate directions for the preparation of the matter for consideration at the appeal.
- 2 If any of the parties requests an oral hearing then the Chairman will consider that request and may or may not decide to hold an oral hearing entirely at his discretion. If there is to be an oral hearing it would normally take place within 28 days of the decision that there should be such a hearing. If there is no oral hearing then CFAB will reach a decision on the matter on the basis of the papers before it once it is satisfied that it has all relevant information available and that any relevant parties have the opportunity to understand and respond to any relevant case made by another party.
- 3 There are particular provisions concerning the process leading to determination of the appeal in respect of witness statements, time limits and other relevant matters. There are also specific provisions relating to the conduct of any appeal hearing.
- 4 The CFAB does not have power to make any order as to costs of the appeal.
- 5 Within 28 days of an oral hearing, or otherwise as soon as is reasonably practicable, the written decision of CFAB will be provided to the parties and will be published on the IMCB website.

Note: Full details for CFAB appeals will be provided to all relevant parties on commencement of an appeal, or will be provided on request.

## Appendix

# Definitions used in the Classification Framework document

The following definitions apply in this document:

“Access Controls” are methods of preventing unrestricted access to content, including barring, PIN controlled access and subscription-only services

“Agreed Bodies” are the British Board of Film Classification (BBFC), Ofcom, Video Standards Council, Newspaper Publishers Association, Entertainment Leisure Software Publishers Association (ELSPA), Interactive Software Federation of Europe (IFSE)/Pan-European Game Information (PEGI)

“Chairman of CFAB” is the person being a qualified solicitor or barrister of not less than ten years’ standing appointed to be Chairman of the Classification Framework Appeals Body

“Classification Framework” is contained within sections 1 and 2 of this a document, is produced by IMCB and sets out the criteria against which Content Providers need to classify their Commercial Content as 18

“Classification Framework Appeals Body” (CFAB) is a body of persons independent of IMCB appointed to hear appeals against decisions made by IMCB under the complaints and dispute procedures (section three)

“Code of Practice for New Content Services” is the code of practice first issued by the Mobile Operators in January 2004 setting out the Mobile Operator obligations to their customers with regard to new forms of content services

“Commercial Content” means content provided by Content Providers to their mobile customers. Mobile Operators act as the delivery and access provider and thus exercise an element of commercial control over the content delivered. Commercial Content includes pictures, video clips, Mobile Games, music, sounds and experiences such as gambling. It does not include content accessed via the Internet – where Mobile Operators are providing only connectivity

“Content Provider” means a Mobile Operator or a provider having a contractual relationship with a Mobile Operator, supplying Commercial Content to customers through a mobile device

“ICSTIS” is the Independent Committee for the Supervision of Standards of Telephone Information Services – the industry funded regulator for Premium Rate Services

“Mobile Operator” is a telecommunications network provider who has subscribed to the Code of Practice for New Content Services – at the release of this version they are 02, Orange, T-Mobile, Virgin Mobile, Vodafone and 3

“Not-Classified” is content for which no classification has been determined by IMCB.

“Premium Rate Service” is as defined in the code of practice issued from time to time by

ICSTIS (currently 10<sup>th</sup> Edition) 18 is any content that is deemed suitable for persons only 18 years or older

“WAP” is wireless application protocol and is a carrier-independent, transaction-orientated protocol for wireless data networks

RE: Use of 1910-1920 in Czech republic \_GINIS - Spisová služba (= Český telekomun. úřad) - El. podání přijaté dne - 22.7.2008 11:18:00]

From: [REDACTED]  
To: [REDACTED]  
CC: [REDACTED], <jmuleta@m2znetworks.com>, 'Uzoma Onyeije' <uonyeije@m2znetworks.com>  
Reply-To: <[REDACTED]>  
Date: Jul 24 2008 - 12:14pm

----- Original Message -----  
Subject: RE: [CTUSPAM?] Re: FW: Use of 1910-1920 in Czech republic \_GINIS - Spisová služba (= Český telekomun. úřad) - El. podání přijaté dne - 22.7.2008 11:18:00  
From: "ELLINGER Pavel"  
Date: Thu, July 24, 2008 2:25 am  
To: [REDACTED]

Hello,  
There are no radiated power limitations in national frequency plans for those bands.  
Operators can use permitted power in hole band.  
For more information you can see frequency plan:  
[http://www.ctu.eu/164/download/Measures/General\\_Nature/RSUP/CZE\\_RSUP-P-6-06-2007-07\\_eng.pdf](http://www.ctu.eu/164/download/Measures/General_Nature/RSUP/CZE_RSUP-P-6-06-2007-07_eng.pdf)

Regards

Pavel Ellinger

-----Original Message-----  
From: [REDACTED] [mailto:[REDACTED]]  
Sent: Wednesday, July 23, 2008 4:02 PM  
To: ELLINGER Pavel  
Subject: [CTUSPAM?] Re: FW: Use of 1910-1920 in Czech republic \_GINIS - Spisová služba (= Český telekomun. úřad) - El. podání přijaté dne - 22.7.2008 11:18:00  
Importance: Low

Thank you for your useful and timely response.

Two brief additional questions:

What is the maximum mobile unit power permitted in 1910-1920 and in 1920.3 - 1979,7?

Do the operators in these two bands use the whole bands at maximum permitted power or do they restrict power in the part of their bands near 1920 MHz?

Thank you very much for your cooperation.

The links section of [REDACTED] may be useful to you as a "gateway" to US spectrum information since the FCC's own site is rather confusing.

[REDACTED]

>

>

> -----Original Message-----

> From: ELLINGER Pavel

> Sent: Wednesday, July 23, 2008 9:35 AM

> To: [REDACTED]

> Cc: BULÍNOVÁ Kateřina

> Subject: RE: Use of 1910-1920 in Czech republic\_GINIS - Spisová služba  
> (Český telekomun. úřad) - El. podání přijaté dne - 22.7.2008 11:18:00

>

> Dear Mr. [REDACTED]

> The band 1900.1-1920.1 MHz is allocated for TDD UMTS system and the  
> band

> 1920.3 - 1979.7 / 2110.3 -2169.7 MHz is allocated for FDD UMTS systems  
> in the Czech Republic.

> You are right, that T-Mobile prefers TDD access to wide-band services.

> Second operator Telefonica O2 prefers FDD access. Third operator

> Vodafone has not started commercial traffic yet.

>

> Permitted radiated power is 300 W per sector.

>

> There were not any significant cases of interferences between operators.

>

> Best regard

>

> Pavel Ellinger

> Head of the Land Mobile Service Division

>

> Czech Telecommunication Office

> Department of Frequency Spectrum Management

>

> -----

> Odesílatel [REDACTED] /,, [REDACTED]

> Víc : El. podání přijaté dne - 22.7.2008 11:18:00 Víc podrobní : od  
> odboru

> 605 - určeno pro odbor 613 Datum podání : 22.7.2008 13:54:29 Stav :

> Nevyřízeno

> -----

> Elektronické přílohy : mail\_3.eml, potvrzen.txt

>

> understand that 1900.1-1920.1 MHz is used in Czech Republic for TDD

> service by T-Mobile, while the adjacent 1920.3-2169.7 is used for

> IMT-2000/UMTS service according to

>

> "Part No. PV-P/6/06.2007-7 of the Radio Spectrum Utilisation Plan for

> the frequency band 1900-2200 MHz"

>

> [http://www.ctu.eu/164/download/Measures/General\\_Nature/RSUP/CZE\\_RSUP-P](http://www.ctu.eu/164/download/Measures/General_Nature/RSUP/CZE_RSUP-P)



> -6-06-2007-07\_eng.pdf

>

>

>

> This use is similar to a proposal at FCC for adjacent TDD and FDD use  
> that has become very controversial, so information from your country  
> would be very helpful.

>

>

>

> 1. Are both bands actually used now in Czech Republic?

>

> 2. What is the maximum allowed power for portables/mobile units in  
> each band?

>

> 3. Are any special measures taken to avoid interference between these  
> two bands?

>

>

>

> Thank you for your assistance.

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